

HB0217S01 compared with HB0217

~~{deleted text}~~ shows text that was in HB0217 but was deleted in HB0217S01.

inserted text shows text that was not in HB0217 but was inserted into HB0217S01.

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Representative Norman K. Thurston proposes the following substitute bill:

TELEPHONE SOLICITATION AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Norman K. Thurston

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies the Telephone and Facsimile Solicitation Act and the Telephone Fraud Prevention Act.

Highlighted Provisions:

This bill:

- ~~{~~ → amends the Telephone and Facsimile Solicitation Act (TFSA) definition of "automated telephone dialing system" to prohibit telephone solicitations made by a live person;
- { →
 - ▶ modifies the ~~{TFSA}~~ Telephone and Facsimile Solicitation Act definition of "telephone solicitation" to include a telephone solicitation made to encourage a person to sell real or personal property to the solicitor;
 - ▶ prohibits a person from making a telephone solicitation to a cellular phone without

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prior consent;

- ▶ amends definitions in the Telephone Fraud Prevention Act (TFPA);
- ▶ modifies security requirements for a registered seller under the TFPA;
- ▶ specifies penalties for a seller or solicitor who violates the TFPA;
- ▶ amends the prohibited practices under the TFPA;
- ▶ modifies the types of information the Division of Consumer Protection (division) is required to redact from a consumer complaint regarding conduct the division regulates under the TFPA before making the consumer complaint public; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

13-25a-102, as last amended by Laws of Utah 2021, Chapter 289

13-25a-103, as last amended by Laws of Utah 2004, Chapters 90 and 263

13-26-2, as last amended by Laws of Utah 2012, Chapter 152

13-26-3, as last amended by Laws of Utah 2013, Chapter 124

13-26-4, as last amended by Laws of Utah 2017, Chapter 98

13-26-5, as last amended by Laws of Utah 1994, Chapter 189

13-26-8, as last amended by Laws of Utah 2013, Chapter 124

13-26-11, as last amended by Laws of Utah 2013, Chapter 124

13-26-12, as enacted by Laws of Utah 2015, Chapter 335

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **13-25a-102** is amended to read:

13-25a-102. Definitions.

As used in this chapter:

(1) "Advertisement" means material offering for sale, or advertising the availability or quality of, any property, [~~goods, or services~~] good, or service.

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(2) (a) "Automated telephone dialing system" means equipment used to:

(i) store or produce telephone numbers; ~~{ } {and}~~

(ii) call a stored or produced number ~~{ }~~; and ~~{ }~~

~~{ }~~(iii) connect the number called with a recorded message or artificial voice. ~~{ }~~

(b) "Automated telephone dialing system" does not include ~~[equipment used with a burglar alarm system, voice messaging system, fire alarm system, or other system]~~ a system used in an emergency involving the immediate health or safety of a person ~~[-], including a burglar alarm system, voice messaging system, fire alarm system, or other similar system.~~

(3) "Division" means the Division of Consumer Protection ~~[in the Department of Commerce]~~.

(4) (a) "Established business relationship" means a relationship that:

(i) is based on inquiry, application, purchase, or transaction regarding products or services offered;

(ii) is formed by a voluntary two-way communication between a person making a telephone solicitation and a person to whom a telephone solicitation is made; and

(iii) has not been terminated by:

(A) an act by either ~~[party]~~ person; or

(B) the passage of 18 months since the most recent inquiry, application, purchase, transaction, or voluntary two-way communication.

(b) "Established business relationship" includes a relationship with an affiliate as defined in Section 16-10a-102.

(5) "Facsimile machine" means equipment used for:

(a) scanning or encoding text or images for conversion into electronic signals for transmission; or

(b) receiving electronic signals and reproducing them as a duplicate of the original text or image.

(6) "Negative response" means a statement from a ~~[party]~~ person stating the ~~[party]~~ person does not wish to listen to the sales presentation or participate in the solicitation presented in the telephone call.

(7) "On-call emergency provider" means an individual who is required by an employer to be on call to respond to a medical emergency.

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(8) "Telephone solicitation" means the initiation of a telephone call or message for a commercial purpose or to seek a financial donation, including calls:

(a) encouraging the purchase or rental of, or investment in, property, goods, or services, regardless of whether the transaction involves a nonprofit organization;

(b) soliciting a sale of or extension of credit for property or services to the person called;

(c) soliciting information that will be used for:

(i) the direct solicitation of a sale of property or services to the person called; or

(ii) an extension of credit to the person called for a sale of property or services; ~~[or]~~

(d) soliciting a charitable donation involving the exchange of any premium, prize, gift, ticket, subscription, or other benefit in connection with any appeal made for a charitable purpose[-]; or

~~(e) encouraging the person called to sell real or personal property~~ to the telephone solicitor.

(9) "Telephone solicitor" means any ~~[natural person]~~ individual, firm, organization, partnership, association, or corporation who makes or causes to be made an unsolicited telephone call, including calls made by use of an automated telephone dialing system.

(10) "Unsolicited telephone call" means a telephone call for a commercial purpose or to seek a financial donation other than a call made:

(a) in response to an express request of the person called;

(b) primarily in connection with an existing debt or contract, payment or performance of which has not been completed at the time of the call;

(c) to ~~[any]~~ a person with whom the telephone solicitor has an established business relationship; or

(d) as required by law for a medical purpose.

Section 2. Section **13-25a-103** is amended to read:

13-25a-103. Prohibited conduct for telephone solicitations -- Exceptions.

(1) Except as provided in Subsection (2), a person may not operate or authorize the operation of an automated telephone dialing system to make a telephone solicitation.

(2) A person may operate an automated telephone dialing system if a call is made:

(a) with the prior express consent of the person who is called agreeing to receive a

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telephone solicitation from a specific solicitor; or

(b) to a person with whom the solicitor has an established business relationship.

(3) A person may not make a telephone solicitation to a residential telephone or cellular telephone without prior express consent during any of the following times:

(a) [~~before 8 a.m. or after 9 p.m.~~] between the hours of 9 p.m. and 8 a.m. local time;

(b) on a Sunday; or

(c) on a legal holiday.

(4) A person may not make or authorize a telephone solicitation in violation of Title 47 U.S.C. 227.

(5) [~~Any~~] A telephone solicitor who makes an unsolicited telephone call to a telephone number shall:

(a) identify the telephone solicitor;

(b) identify the business on whose behalf the telephone solicitor is soliciting;

(c) promptly identify the purpose of the call [~~promptly~~] upon making contact by telephone with the person who is the object of the telephone solicitation;

(d) discontinue the solicitation if the person being solicited gives a negative response at any time during the telephone call; and

(e) hang up the phone, or in the case of an automated telephone dialing system operator, disconnect the automated telephone dialing system from the telephone line within 25 seconds of the termination of the call by the person being called.

(6) [~~A~~] If a telephone solicitor's service or equipment is capable of displaying the telephone solicitor's telephone number through a caller identification service, the telephone solicitor may not withhold the display of the telephone solicitor's telephone number from a caller identification service when that number is being used for telemarketing purposes [~~and when the telephone solicitor's service or equipment is capable of allowing the display of the number~~].

Section 3. Section **13-26-2** is amended to read:

13-26-2. Definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Affiliated person" means a seller or a seller's contractor, director, employee, officer, owner, or partner.

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~~[(1)]~~ (2) "Continuity plan" means a shipment, with the prior express consent of the buyer, at regular intervals of similar special-interest products ~~[. A continuity plan is distinguished from a subscription arrangement by no binding commitment period or purchase amount]~~, in which there is no binding commitment period or purchase amount.

~~[(2)]~~ (3) "Division" means the Division of Consumer Protection.

~~[(3)]~~ (4) "Fictitious personal name" means a name other than an individual's ~~[true name. An "individual's true name" is the name taken at birth unless changed by operation of law or by civil action]~~ legal name.

~~[(4)]~~ (5) "Material statement" or "material fact" means information that a person of ordinary intelligence or prudence would consider important in deciding whether ~~[or not]~~ to accept an offer extended through a telephone solicitation. ~~{}~~

~~[(5)]~~ (a) (6) "Participant" means a person seeking to register or renew a registration as a seller ~~;~~

~~— (b) "Participant" includes the following persons seeking to register or renew a registration as a seller:~~

~~— (i) including:~~

~~(a)~~ a seller;

~~(ii) (b)~~ an owner;

~~(iii) (c)~~ an officer;

~~(iv) (d)~~ a director;

~~(v) (e)~~ a member or manager of a limited liability company;

~~(vi) (f)~~ a principal;

~~(vii) (g)~~ a trustee;

~~(viii) (h)~~ a general or limited partner;

~~{ (ix) a manager;~~

~~{ (x) (i) a sole proprietor; or~~

~~(xi) an employee; or~~

~~— (xii) (j) an individual with a controlling interest in an entity ~~{ seeking to register or renew a registration as a seller}~~.~~

~~[(5)]~~ (6) (7) "Premium" means a gift, bonus, prize, award, certificate, or other document by which a prospective purchaser is given a right, chance, or privilege to purchase or

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receive goods or services with a stated or represented value of \$25 or more as an inducement to a prospective purchaser to purchase other goods or services.

~~(f7)8~~ "Seller" means a person ~~{ who, directly or through a }~~, or a group of persons engaged in a common effort to conduct a telephone solicitation, that:

(a) on behalf of the person, or the group of persons engaged in a common effort to conduct a telephone solicitation:

(i) makes a telephone solicitation; or

(ii) causes a telephone solicitation to be made; or

(b) through a telephone solicitor:

~~(a)i~~ makes a telephone solicitation; or

~~(b)ii~~ causes a telephone solicitation to be made.

[(6)] ~~(f8)9~~ "Subscription arrangements," "standing order arrangements," "supplements," and "series arrangements" mean products or services provided, with the prior express request or consent of the buyer, for a specified period of time at a price dependent on the duration of service and to complement an initial purchase.

[(7)] ~~(f9)10~~ (a) "Telephone solicitation," "sale," "selling," or "solicitation of sale" means:

(i) a sale or solicitation of goods or services in which:

(A) (I) the seller solicits the sale over the telephone;

(II) the purchaser's agreement to purchase is made over the telephone; and

(III) the purchaser, over the telephone, pays for or agrees to commit to payment for goods or services prior to or upon receipt by the purchaser of the goods or services;

(B) the ~~[solicitor]~~ seller, not exempt under Section 13-26-4, induces a prospective purchaser over the telephone, to make and keep an appointment that directly results in the purchase of goods or services by the purchaser that would not have occurred without the telephone solicitation and inducement by the ~~[solicitor]~~ seller;

(C) the seller offers or promises a premium to a prospective purchaser if:

(I) the seller induces the prospective purchaser to initiate a telephone contact with the ~~[telephone soliciting business]~~ seller; and

(II) the resulting solicitation meets the requirements of Subsection ~~[(7)]~~ (10)(a); or

(D) the ~~[solicitor]~~ seller solicits a charitable donation involving the exchange of any

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premium, prize, gift, ticket, subscription, or other benefit in connection with ~~[any]~~ an appeal made for a charitable purpose by an organization that is not otherwise exempt under Subsection 13-26-4(2)(b)(iv); or

(ii) a telephone solicitation as defined in Section 13-25a-102.

(b) "Telephone solicitation," "sale," "selling," or "solicitation of sale" does not include a sale or solicitation that occurs solely through an Internet website without the use of a telephone call.

(c) A solicitation of sale or telephone solicitation is considered complete when made, whether or not the person receiving the solicitation agrees to the sale or to make a charitable donation.

~~[(8) "Telephone soliciting business" means a sole proprietorship, partnership, limited liability company, corporation, or other association of individuals engaged in a common effort to conduct telephone solicitations.]~~

~~[(9) ~~(10;11)~~ "Telephone solicitor" or "solicitor" means [a person, partnership, limited liability company, corporation, or other entity that:]~~ an individual who engages in a telephone solicitation on behalf of a seller.

~~[(a) makes a telephone solicitation; or]~~

~~[(b) causes a telephone solicitation to be made.]~~

Section 4. Section **13-26-3** is amended to read:

13-26-3. Registration and bond required.

(1) (a) Unless exempt under Section 13-26-4, each ~~[telephone soliciting business]~~ seller shall register annually with the division before engaging in telephone solicitations if:

(i) the ~~[telephone soliciting business]~~ seller engages in telephone solicitations that:

(A) originate in Utah; or

(B) are received in Utah; or

(ii) the ~~[telephone soliciting business]~~ seller, or a solicitor on behalf of the seller, conducts any business operations in Utah.

(b) The registration form shall designate an agent residing in this state who is authorized by the ~~[telephone soliciting business]~~ seller to receive service of process in any action brought by this state or a resident of this state.

(c) If a ~~[telephone soliciting business]~~ seller fails to designate an agent to receive

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service or fails to appoint a successor to the agent, the division shall:

(i) ~~[the business']~~ deny the seller's application for an initial or renewal registration
~~[shall be denied]~~; and

~~[(ii) any current registration shall be suspended until an agent is designated.]~~

(ii) if the application is for a renewal registration, suspend the seller's current registration until the seller designates an agent.

(d) ~~[(f)]~~ For purposes of this section only, the registered agent of a ~~[telephone soliciting business]~~ seller shall provide the division the registered agent's proof of residency in the state[-]
in the form of:

(i) a valid Utah driver license;

(ii) a valid governmental photo identification issued to a resident of this state; or

(iii) other verifiable identification indicating residency in this state.

~~[(ii) Proof of residency under Subsection (1)(d)(i) may be provided by a valid Utah driver license, valid governmental photo identification issued to a resident of the state, or other verifiable identification indicating residency in the state.]~~

(2) The division may impose an annual registration fee set ~~[pursuant to]~~ in accordance with Section 63J-1-504 that may include the cost of the criminal background check described in Subsection (4).

(3) (a) Each ~~[telephone soliciting business]~~ seller subject to this chapter engaging in telephone solicitation or sales in this state shall obtain and maintain the following security:

(i) a performance bond issued by a surety authorized to transact surety business in this state;

(ii) an irrevocable letter of credit issued by a financial institution authorized ~~[to do]~~
under the laws of this state or the United States doing business in this state; or

(iii) a certificate of deposit held in this state in a ~~[depository]~~ financial institution
~~[regulated by the Department of Financial Institutions]~~ authorized under the laws of this state or the United States to accept deposits from the public.

(b) ~~[The]~~ A seller's bond, letter of credit, or certificate of deposit shall be payable to the division for the benefit of any consumer who incurs damages as the result of ~~[any telephone solicitation or sales]~~ the seller's violation of this chapter.

(c) ~~[The]~~ If the consumer has first recovered full damages, the division may recover

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from the bond, letter of credit, or certificate of deposit administrative fines, civil penalties, investigative costs, attorney fees, and other costs of collecting and distributing funds under this section [~~and the costs of promoting consumer education, but only if the consumer has first recovered full damages~~].

(d) A [~~telephone soliciting business~~] seller shall keep a bond, certificate of deposit, or letter of credit in force for one year after [~~it~~] the day on which the seller notifies the division in writing that [~~it~~] the seller has ceased all activities regulated by this chapter.

(e) The [~~amount to be posted in the form of a~~] seller shall post a bond, irrevocable letter of credit, or certificate of deposit [~~shall be~~] in the amount of:

(i) \$25,000 if:

(A) neither the [~~telephone soliciting business~~] seller nor any affiliated person has violated this chapter [~~within three years preceding the date of the application~~] in the three-year period immediately before the day on which the seller files the application; and

(B) the [~~telephone soliciting business~~] seller has fewer than 10 employees;

(ii) \$50,000 if:

(A) neither the [~~telephone soliciting business~~] seller nor any affiliated person has violated this chapter [~~within three years preceding the date of the application~~] in the three-year period immediately before the day on which the seller files the application; and

(B) the [~~telephone soliciting business~~] seller has 10 or more employees; or

(iii) \$75,000 if the [~~telephone soliciting business~~] seller or any affiliated person has violated this chapter [~~within three years preceding the date of the application~~] in the three-year period immediately before the day on which the seller files the application.

[~~(f) For purposes of Subsection (3)(c) an "affiliated person" means a contractor, director, employee, officer, owner, or partner of the telephone soliciting business.~~]

[~~(4)(a) As used in this Subsection (4), "participant" means an individual with a controlling interest in or an owner, officer, director, member, principal, trustee, general partner, limited partner, manager, sole proprietor, or key employee of a person seeking to register or renew a registration as a telephone soliciting business.~~]

[~~(b) As part of the process to register or renew a registration as a telephone soliciting business, a participant:~~]

[~~(i) may not, within the previous 10 years, have been convicted of a felony;~~]

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~~[(ii) may not, within the previous 10 years, have been convicted of a misdemeanor involving moral turpitude, including theft, fraud, or dishonesty, and]~~

(4) To register or renew a registration as a seller, a participant:

(a) may not have been convicted of a felony in the 10-year period immediately before the day on which the participant files the application;

(b) may not have been convicted of a misdemeanor involving moral turpitude, including theft, fraud, or dishonesty, in the 10-year period immediately before the day on which the participant files the application; and

~~[(iii)]~~ (c) shall submit to the division:

~~[(A)]~~ (i) the participant's fingerprints, in a form acceptable to the division, for purposes of a criminal background check; and

~~[(B)]~~ (ii) consent to a criminal background check by the Bureau of Criminal Identification created in Section 53-10-201.

(5) [The] In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division may establish by rule the registration requirements for [telephone soliciting businesses under the terms of Title 63G, Chapter 3, Utah Administrative Rulemaking Act. An administrative proceeding conducted by the division under this chapter shall comply with the requirements of Title 63G, Chapter 4, Administrative Procedures Act] a seller.

(6) If information in an application for registration or for renewal of registration as a [telephone soliciting business] seller materially changes or becomes incorrect or incomplete, the applicant shall, within 30 days after the day on which information changes or becomes incorrect or incomplete, [correct the application or] submit the correct information to the division in a manner that the division establishes by rule.

(7) The division director may deny or revoke a registration under this section for any violation of this chapter.

Section 5. Section ~~13-26-4~~ is amended to read:

13-26-4. Exemptions from registration.

(1) In [any] an enforcement action initiated by the division, [the] a person claiming an exemption has the burden of proving that the person is entitled to the exemption.

(2) The following are exempt from [the requirements of] this chapter except for the requirements [of] described in Sections 13-26-8 and 13-26-11:

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(a) a broker, agent, dealer, or sales professional licensed [~~under the licensure laws of~~] in this state, when soliciting sales within the scope of [~~his~~] the broker's, agent's, dealer's, or sales professional's license;

(b) the solicitation of sales by:

(i) a public utility that is regulated under Title 54, Public Utilities, or by an affiliate of the public utility;

(ii) a newspaper of general circulation;

(iii) a solicitation of [~~sales~~] sale made by a broadcaster licensed by [~~any~~] a state or federal authority;

(iv) a nonprofit organization if no part of the net earnings from the sale inures to the benefit of [~~any~~]:

(A) a member, officer, trustee, or serving board member of the organization[~~;~~]; or

(B) an individual, or a family member of an individual, holding a position of authority or trust in the organization; and

(v) a person who periodically publishes and delivers a catalog of the [~~solicitor's~~] seller's merchandise to prospective purchasers, if the catalog:

(A) contains the price and a written description or illustration of each item offered for sale;

(B) includes the seller's business address [~~of the solicitor~~];

(C) includes at least 24 pages of written material and illustrations;

(D) is distributed in more than one state; and

(E) has an annual circulation by mailing of not less than 250,000;

(c) [~~any publicly-traded~~] a publicly traded corporation registered with the Securities and Exchange Commission, or [~~any~~] a subsidiary of the publicly traded corporation;

(d) the solicitation of [~~any~~] a depository institution as defined in Section 7-1-103, a subsidiary of a depository institution, personal property broker, securities broker, investment adviser, consumer finance lender, or insurer subject to regulation by an official agency of this state or the United States;

(e) the solicitation by a person soliciting only the sale of telephone services to be provided by the person or the person's employer;

(f) the solicitation of a person relating to a transaction regulated by the Commodities

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Futures Trading Commission, if:

(i) the person is registered with or temporarily licensed by the commission to conduct ~~[that]~~ the activity under the Commodity Exchange Act; and

(ii) the registration or license has not expired or been suspended or revoked;

(g) the solicitation of a contract for the maintenance or repair of goods previously purchased from the person:

(i) who is making the solicitation; or

(ii) on whose behalf the solicitation is made;

(h) the solicitation of previous customers of the ~~[business]~~ person on whose behalf the call is made if the person making the call:

(i) does not offer any premium in conjunction with a sale or offer;

(ii) is not selling an investment or an opportunity for an investment that is not registered with ~~[any]~~ a state or federal authority; and

(iii) is not regularly engaged in telephone sales;

(i) the solicitation of a sale that is an isolated transaction and not done in the course of a pattern of repeated transactions of a ~~[like]~~ similar nature;

(j) the solicitation of a person by a retail business ~~[establishment]~~ that has been in operation for at least five years in Utah under the same name as that used in connection with telemarketing if ~~[both of]~~ the following occur on a continuing basis:

~~[(i) products are displayed and offered for sale at the place of business, or services are offered for sale and provided at the place of business; and]~~

(i) at the retail business's place of business, the retail business:

(A) displays and offers products for sale; or

(B) offers services for sale and provides the services at the place of business; and

(ii) a majority of the [seller's] retail business's business involves the [buyer obtaining the products or services at the seller's place of business] activities described in Subsection (2)(j)(i);

(k) a person primarily soliciting the sale of a magazine or periodical sold by the publisher or the publisher's agent through a written agreement, or printed or recorded material through a contractual plan, such as a book or record club, continuity plan, subscription, standing order arrangement, or supplement or series arrangement if:

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(i) the [seller] person provides the consumer with a form that the consumer may use to instruct the [seller] person not to ship the offered merchandise, and the arrangement is regulated by the Federal Trade Commission trade regulation concerning use of negative option plans by [sellers] a person making a sale in commerce; or

(ii) (A) the [seller] person periodically ships merchandise to a consumer who has consented in advance to receive the merchandise on a periodic basis; and

(B) the consumer retains the right to cancel at any time and receive a full refund for the unused portion;

(l) a telephone marketing service company that provides telemarketing sales services under contract to [sellers] a person making a sale if:

(i) [it] the telephone marketing service company has been doing business regularly with customers in Utah for at least five years under the same business name and with [its] the telephone marketing service company's principal office in the same location;

(ii) at least 75% of [its] the telephone marketing service company's contracts are performed on behalf of persons [exempted] exempt from registration under this chapter; and

(iii) neither the telephone marketing service company nor [its] the telephone marketing service company's principals have been enjoined from doing business or subjected to criminal actions for [their] the telephone marketing service company's or the telephone marketing company's principal's business activities in this or any other state;

(m) a credit services organization that holds a current registration with the division under Chapter 21, Credit Services Organizations Act, if the credit services organization's telephone solicitations are limited to the solicitation of services regulated under Chapter 21, Credit Services Organizations Act; and

(n) a provider that holds a current registration with the division under Chapter 42, Uniform Debt-Management Services Act, if the provider's telephone solicitations are limited to the solicitation of services regulated under ~~[Chapter 21, Credit Services Organizations Act]~~ Chapter 42, Uniform Debt-Management Services Act.

Section 6. Section **13-26-5** is amended to read:

13-26-5. Right of rescission -- Cancellation.

(1) As used in this section, "business day" means a day other than Sunday or a federal or state holiday.

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~~[(1)]~~ (2) (a) Except as provided in Subsections ~~[(1)]~~ (2)(b) and (c), in addition to any right to otherwise revoke an offer, a person ~~[making]~~ who makes a purchase from a ~~[telephone soliciting business required to be registered under this chapter]~~ seller may cancel the sale ~~[up to]~~ before midnight of the third business day after the ~~[receipt of]~~ day on which the person receives the merchandise or premium, whichever is later, provided the seller or the seller's solicitor advises the purchaser of ~~[his]~~ the purchaser's cancellation rights under this chapter at the time ~~[any]~~ the solicitation is made.

(b) If the seller or the seller's solicitor ~~[required to be registered under this chapter]~~ fails to orally advise a purchaser of the right to cancel under this section at the time of ~~[any]~~ a solicitation, the purchaser's right to cancel ~~[shall be]~~ is extended to 90 days.

(c) If the seller or the seller's solicitor ~~[required to be registered under this chapter]~~ fails to orally advise a purchaser of ~~[his true]~~ the seller's or the seller's solicitor's legal name, telephone number, and complete ~~[street]~~ address at the time of ~~[any]~~ a solicitation, the purchaser may cancel the sale at any time.

(d) Except as provided in Subsection (5), a seller shall provide a full refund to a purchaser who cancels a sale in accordance with this section.

~~[(2) Sales shall be cancelled by]~~

(3) A purchaser may cancel a sale by:

(a) mailing a notice of cancellation to the ~~[telephone]~~ seller or seller's solicitor's correct ~~[street]~~ address, postage prepaid~~[- If];~~ or

(b) if the ~~[telephone solicitor provided no]~~ seller or the seller's solicitor fails to provide the purchaser with the seller's or the seller's solicitor's correct ~~[street]~~ address, ~~[cancellation can be accomplished by]~~ sending a notice of cancellation to the division's ~~[offices]~~ office, postage prepaid.

~~[(3)(a) If a cancellation involves durable goods, as defined by rule, those goods shall be returned to the seller.]~~

~~[(b) If expendable goods are involved, the purchaser shall return any unused portion of those goods.]~~

~~[(c) A reasonable attempt shall be made to return goods to the solicitor's correct street address within seven days of exercising the right to cancel, providing the solicitor has provided the purchaser with the address. If the solicitor has failed to give a correct address, no return is~~

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~~required to qualify for a full refund of the purchase price.]~~

(4) (a) If a purchaser cancels a sale and the seller or the seller's solicitor provides the purchaser with the seller's correct address, the purchaser shall, within seven business days after the day on which the purchaser exercises the right to cancel, make a reasonable attempt to:

(i) if the canceled sale involves durable goods, return the goods to the seller; or

(ii) if the canceled sale involves expendable goods, return any unused portion of the goods to the seller.

(b) If the seller or the seller's solicitor fails to provide to a purchaser the seller's correct address, a purchaser who cancels a sale is not required to return any canceled goods to the seller.

~~[(d)] (5) (a) If the purchaser who cancels a sale has used any portion of the services or goods purchased, the [solicitor or telephone soliciting business shall receive a reasonable allowance for value given. This allowance may be deducted from any refund due the purchaser]~~ purchaser shall provide the seller a reasonable allowance for the value given.

(b) A seller may deduct the reasonable allowance described in Subsection (5)(a) from any refund due the purchaser.

~~[(c) A solicitor shall be jointly and severally liable with the telephone soliciting business for any refund amount due following the cancellation of a sale made by the solicitor.]~~

~~[(4) For the purposes of this section, "business day" does not include Sunday or a federal or state holiday.]~~

Section 7. Section **13-26-8** is amended to read:

13-26-8. Penalties.

~~[(1) (a) Any telephone soliciting business or any person associated with a telephone soliciting business, including solicitors, salespersons, agents, representatives of a solicitor, or independent contractor, who violates this chapter as a first offense is guilty of a class B misdemeanor.]~~

~~[(b) In the case of a second offense, the person is guilty of a class A misdemeanor.]~~

~~[(c) In the case of three or more offenses, the person is guilty of a third degree felony.]~~

~~[(d) (i) In addition to other penalties under this Subsection (1), the division director may issue a cease and desist order and impose an administrative fine of up to \$2,500 for each violation of this chapter.]~~

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~~[(ii) For purposes of Subsection (1)(d)(i), each telephone solicitation made in violation of this chapter is a separate violation.]~~

~~[(iii) All money received through administrative fines imposed under this section shall be deposited in the Consumer Protection Education and Training Fund created by Section 13-2-8.]~~

(1) (a) A seller or solicitor who violates a provision of this chapter is guilty of:

(i) a class B misdemeanor for a first violation;

(ii) ~~if the seller or solicitor has one prior violation of this chapter,~~ a class A misdemeanor ~~{ for a second violation};~~ and

(iii) ~~if the seller or solicitor has two prior violations of this chapter,~~ a third-degree felony ~~{ for a third or subsequent violation}.~~

(b) For the purposes of Subsection (1)(a), a prior violation includes:

(i) a final prior conviction;

(ii) a final determination by a court of competent jurisdiction; or

(iii) a final determination in an administrative adjudicative proceeding.

~~(2) [Any telephone soliciting business or any person associated with a telephone soliciting business, including solicitors, salespersons, agents, representatives of a solicitor, or independent contractors,] A person who violates [any] a provision of this chapter [shall be] is subject to a civil penalty in a court of competent jurisdiction [not exceeding] of up to \$2,500 for each [unlawful transaction] violation of this chapter.~~

(3) (a) The division may:

(i) in accordance with Title 63G, Chapter 4, Administrative Procedures Act, conduct an administrative proceeding to enforce the provisions of this chapter;

(ii) bring a court action to enforce the provisions of this chapter; and

(iii) in addition to other penalties described in this chapter, issue a cease and desist order and impose an administrative fine of up to \$2,500 for each violation of this chapter.

(b) For purposes of this section, each telephone solicitation made in violation of this chapter is a separate violation.

(4) The division shall deposit all administrative fines and civil penalties collected under this chapter into the Consumer Protection Education and Training Fund created in Section 13-2-8.

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Section 8. Section 13-26-11 is amended to read:

13-26-11. Prohibited practices.

(1) It is unlawful for ~~[any solicitor]~~ a seller to:

(a) ~~[to]~~ solicit a prospective purchaser ~~[on behalf of a telephone soliciting business that]~~ if the seller is not registered with the division or exempt from registration under this chapter;

~~[(b) to use a fictitious personal name in connection with a telephone solicitation;]~~

~~[(c)]~~ (b) ~~[to]~~ in connection with a telephone solicitation or a filing with the division, make or cause to be made ~~[any untrue]~~ a false material statement~~;~~ or fail to disclose a material fact necessary to make ~~[any]~~ the seller's statement ~~[made]~~ not misleading~~;~~ ~~whether in connection with a telephone solicitation or a filing with the division];~~

~~[(d)]~~ (c) ~~[to]~~ make or authorize the making of ~~[any]~~ a misrepresentation to a purchaser or prospective purchaser about ~~[its]~~ the seller's compliance with this chapter ~~[to any prospective or actual purchaser];~~

~~[(e)]~~ (d) ~~[to]~~ fail to refund within 30 days any amount due a purchaser who exercises the right to cancel under Section 13-26-5; ~~[or]~~

~~[(f)]~~ (e) ~~[to]~~ unless the seller is exempt under Section 13-26-4, fail to orally advise a purchaser of the purchaser's right to cancel under Section 13-26-5 ~~[unless the solicitor is exempt under Section 13-26-4.];~~

~~[(2) It is unlawful for any telephone soliciting business:]~~

~~[(a) to cause or permit any solicitor to violate any provision of this chapter; or]~~

~~[(b) to use inmates in telephone soliciting operations where inmates have access to personal data about an individual sufficient to physically locate or contact that individual, such as names, addresses, telephone numbers, Social Security numbers, credit card information, or physical descriptions.]~~

(f) employ an inmate in a correctional facility for telephone soliciting operations when the employment would give the inmate access to an individual's personal data, including the individual's name, address, telephone number, Social Security number, credit card information, or physical description~~;~~ that allows the inmate to physically locate or contact the individual~~];~~
or

(g) cause or permit a solicitor to violate a provision of this chapter.

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(2) It is unlawful for a solicitor to:

(a) use a fictitious personal name in connection with a telephone solicitation;

(b) in connection with a telephone solicitation, make or cause to be made a false material statement or fail to disclose a material fact necessary to make the solicitor's statement not misleading;

(c) make a misrepresentation to a purchaser or prospective purchaser about the solicitor's compliance with this chapter; or

(d) unless the solicitor is exempt under Section 13-26-4, fail to orally advise a purchaser of the purchaser's right to cancel under Section 13-26-5.

(3) If a person knows or has reason to know that a seller or solicitor is engaged in an act or practice that violates this chapter, it is unlawful for the person to:

(a) benefit from the seller's or solicitor's services; or

(b) provide substantial assistance or support to the seller or solicitor.

Section 9. Section **13-26-12** is amended to read:

13-26-12. Consumer complaints are public.

(1) As used in this section, "consumer complaint" means a complaint that:

~~[(a) is filed with the division by a consumer or business;]~~

(a) a person files with the division;

(b) alleges facts relating to conduct that the division regulates under this chapter; and

(c) (i) alleges a loss to the ~~[consumer or business]~~ person described in Subsection ~~(1)(a)~~ of \$3,500 or more; or

(ii) is one of at least 50 ~~[other]~~ complaints filed with the division:

(A) against the same person ~~[filed by other consumers or businesses]~~; and

(B) during the ~~[four years immediately preceding the filing of the complaint]~~ four-year period immediately before the day on which the person described in Subsection (1)(a) files the complaint.

(2) For purposes of determining the number of complaints against the same person under Subsection (1)(c)(ii)(A), the division may consider complaints filed against multiple corporations, limited liability companies, partnerships, or other business entities under common ownership to be complaints against the same person.

(3) Notwithstanding Subsection 13-11-7(2) and subject to Subsections (4) and (5), a

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consumer complaint:

- (a) is a public record; and
- (b) may not be classified as a private, controlled, or protected record under Title 63G,

Chapter 2, Government Records Access and Management Act.

- (4) Subsection (3) does not apply to a consumer complaint:

~~[(a) (i) if the division determines through an administrative proceeding that the consumer complaint is nonmeritorious; and]~~

~~[(ii) beginning when the nonmeritorious determination is made; or]~~

(a) that is nonmeritorious, beginning the day on which:

(i) the division determines through an administrative proceeding that the consumer complaint is nonmeritorious; or

(ii) a court of competent jurisdiction finds the consumer complaint nonmeritorious; or

(b) that ~~[has been]~~ is on file with the division for more than four years after the day on which the person files the consumer complaint.

(5) Before making a consumer complaint that is subject to Subsection (3) or a response described in Subsection (6) available to the public, the division:

(a) shall redact from the consumer complaint or response any information that would disclose ~~[the address, Social Security number, bank account information, email address, or telephone number of the consumer or business; and]~~:

(i) the filer's:

(A) address;

(B) Social Security number;

(C) bank account information;

(D) email address; or

(E) telephone number; or

(ii) information similar in nature to the information described in Subsection (5)(a)(i);

and

(b) may redact the name of the ~~[consumer or business]~~ filer and any other information that could, in the division's judgment, disclose the identity of the ~~[consumer or business]~~ filer filing the consumer complaint.

(6) A person's initial, written response to a consumer complaint that is subject to

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Subsection [~~2~~] (3) is a public record.